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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

Michael Lacey, et al.,

Defendant(s).

CR 18-422-PHX-SPL (BSB)

GOVERNMENT'S APPLICATION FOR
ORDER REGARDING CRIMINAL
FORFEITURE OF PROPERTY IN
GOVERNMENT CUSTODY

The United States of America, by and through its counsel of
record, the United States Attorney's Office for the District of

1 Arizona and Special Assistant United States Attorney John J.
2 Kucera, hereby moves for an order allowing the government to
3 maintain custody of property already in the government's
4 possession pending the resolution of this criminal matter. In
5 support of its motion, the Government states as follows:

6 On March 28, April 9, April 26, and June 24, 2018, pursuant
7 to civil seizure warrants issued by three separate United States
8 Magistrate Judges in the Central District of California, for the
9 purpose of initiating forfeiture proceedings, the United States
10 seized all right, title, and interest in the following assets (the
11 "seized assets"):

12 1. Funds held in the following bank accounts:

13 a. Prosperity Bank account number XXXXX7188

14 b. Compass Bank Account number XXXXXX3873

15 c. Compass Bank Account number XXXXXX3825

16 d. National Bank of Arizona Account number XXXX0178

17 e. National Bank of Arizona Account number XXXX0151

18 f. National Bank of Arizona Account number XXXX3645

19 g. Live Oak Bank Account Number XXXXXXXXXXXX2523

20 h. Ascensus Broker Dealer Services Account Number
21 XXXXX6943-01

22 i. Ascensus Broker Dealer Services account Number
23 XXXXX5280-01

24 j. First Federal Savings & Loan of San Rafael account number
25 XXXX3620

26 k. Republic Bank of Arizona account number XXXX1889

27 l. Republic Bank of Arizona account number XXXX2592

28 m. Republic Bank of Arizona account number XXXX2912

1 n. Republic Bank of Arizona account number XXXX2500

2 o. Republic Bank of Arizona account number XXXX1938

3 p. Bank of America Account number XXXXXXXXXXXXX8225

4 q. Bank of America Account number XXXXXXXXXXXXX7054

5 r. Bank of America Account number XXXXXXXXXXXXX9342

6 s. Bank of America Account number XXXXXXXXXXXXX0071

7 t. San Francisco Fire Credit Union Account Number

8 XXXXXXXXXXXX2523

9 u. Ally Bank Account Number XXXXXX6292

10 v. Branch Banking and Trust Bank account number

11 XXXXXXXXXXXX0218

12 w. Green Bank Account number XXX4832

13 x. Green Bank Account number XXXXXX4293

14 y. Plains Capital Bank account number XXXXXX1098

15 z. Bank of America IOLTA Account #50033414

16 2. The following domain names:

17 a. atlantabackpage.com

18 b. backpage.be

19 c. backpage.com

20 d. backpage.com.br

21 e. backpage.cz

22 f. backpage.dk

23 g. backpage.ee

24 h. backpage.es

25 i. backpage.fi

26 j. backpage.fr

27 k. backpage.gr

28 l. backpage.hu

The government included certain of these assets in its Indictment, unsealed on March 28, 2018. (CR 18-422-PHX-SPL (BSB) Dkt. #3). Thereafter, on July 25, 2018, in its Superseding Indictment (CR 18-422-PHX-SPL (BSB), Dkt. #230), and on August 24, 2018, in the First Bill of Particulars (CR 18-422-PHX-SPL (BSB),

6 Title 18, United States Code, Section 983(a)(3)(B)(ii)(II)
7 provides that when the government elects to include assets subject
8 to forfeiture in its indictment, it must "take the steps necessary
9 to preserve its right to maintain custody of the property as
10 provided in the applicable criminal forfeiture statute." The
11 applicable criminal forfeiture statute in this case is 21 U.S.C.
12 § 853, which prescribes several methods for preserving property
13 for the purpose of criminal forfeiture:

2. Section 853(e) authorizes a court to issue a restraining order or an injunction to preserve the property for forfeiture. Again, it is unnecessary to issue an order enjoining the government from disposing of property that it has already taken into its custody for the purpose of forfeiture, and that it represents it will preserve for that purpose through the conclusion of the pending criminal case; and

1 In determining whether to issue a restraining order, an
2 indictment against the defendant conclusively establishes probable
3 cause that the charged offenses were committed. *See Kaley v. United*
4 *States*, 571 U.S. 320, 322 (2014) (“A federal statute, 21 U.S.C. §
5 853(e), authorizes a court to freeze an indicted defendant’s assets
6 prior to trial if they would be subject to forfeiture upon
7 conviction. . . . The question presented is whether criminal
8 defendants are constitutionally entitled at [a pretrial] hearing
9 to contest a grand jury’s prior determination of probable cause to
10 believe they committed the crimes charged. We hold that they have
11 no right to relitigate that finding.”). *See also id.* at 340-41
12 (“If the question in a pre-trial forfeiture case is whether there
13 is probable cause to think the defendant committed the crime
14 alleged, then the answer is: whatever the grand jury decides.”).

15 In this case, the seized assets are already in government
16 custody, and the government intends to preserve the assets for the
17 purpose of forfeiture through the conclusion of the pending
18 criminal case. All that is required to comply with section
19 983(a)(3)(B)(ii)(II) is an order from this Court directing the
20 United States and its agencies to continue to maintain custody of
21 the seized assets until the criminal case is concluded. *See, e.g.,*
22 *United States v. Scarmazzo*, 2007 WL 587183, *2-3 (E.D. Cal. 2007)
23 (granting government’s motion for an order under 18 U.S.C. §
24 853(e)(1) to maintain custody of property that was already in the
25 government’s possession, having been previously seized pursuant to
26 search and seizure warrants); *In re 2000 White Mercedes ML320*, 220
27 F. Supp. 2d 1322, 1326 & n.5 (M.D. Fla. 2001) (declining to issue
28 criminal seizure warrant under 18 U.S.C. § 853(f) as to property

1 that was already in the government's possession and noting that
2 the government instead should have sought an order under 18 U.S.C.
3 § 853(e)(1) to maintain custody of the property).

4 For restraining orders issued after an indictment or
5 information has been returned, a pre-restraint hearing is not
6 required. *United States v. Musson*, 802 F. 2d 384, 386-87 (10th
7 Cir. 1986). If any third parties have claims on the assets subject
8 to the requested restraint, section 853(n) sets out a specific
9 procedure for the adjudication of such claims. This process begins,
10 however, "[f]ollowing the entry of an order of forfeiture under
11 this section" 21 U.S.C. § 853(n)(1); see also *Libretti v.*
12 *United States*, 516 U.S. 29, 44 (1995); *United States v. Gilbert*,
13 244 F.3d 888, 911 (11th Cir. 2001) (ancillary proceeding is
14 "exclusive means" for third parties to assert claims to forfeited
15 property; citing legislative history); *United States v. Messino*,
16 122 F.3d 427, 428 (7th Cir. 1997) (under Sections 853(k) and (n),
17 third parties must wait until the court has entered a preliminary
18 order of forfeiture to challenge the forfeiture action).

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1 WHEREFORE, pursuant to section 853(e)(1), the United States
2 respectfully moves this Court to issue an order directing that the
3 United States may maintain custody of the seized assets described
4 above through the conclusion of the pending criminal case, and
5 stating that such order satisfies the requirements of 18 U.S.C. §
6 983(a)(3)(B)(ii)(II).

7
8 August 27, 2018

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